FIRST JUDICIAL DISTRICT COURT
PARISH OF CADDO
STATE OF LOUISIANA

James L. Colvin

v.

Case No. 121-633
Section 1
before the Honorable Judge Katherine Clark Dorroh

State of Louisiana

MOTION TO AMEND AND/OR MODIFY SENTENCE

NOW INTO COURT COMES I, James L. Colvin, pro se, who respectfully moves this Honorable Court to amend or modify my sentence pursuant to Article 822 (A) of the Louisiana Code of Criminal Procedure and in the Interest of Justice.

I

JURISDICTION

The Louisiana Legislature enacted Article 822 (A) of the Code of Criminal Procedure to create a vehicle for the trial court to change the terms of a defendant's sentence after the sentence is imposed.

Article 822 (A)(2): This section of the Article gives the trial court the authority and jurisdiction to consider modifying, amending, or reconsidering the sentence imposed (emphasis added), especially in light of the 2018 enactment of LA. R.S. 15: 529.1 (K)(1) and State v. Floyd, 254 So. 3d 38 (LA. App. 2d Cir. 08/15/18), which REQUIRES sentencing courts to apply the provisions of the habitual offender law that were in effect on the date a defendant's instant offense was committed.

The amendment of Article 881.1, does not prevent but allows this Court under the grandfather clause, "ex post facto," to grant this motion. LA. Const. Art. 1 Section 23.

II

STATEMENT OF THE CASE

On April 28, 1983, I was convicted of armed robbery and sentenced to 80 years at Hard Labor without parole, probation, or suspension of sentence. The Louisiana Second Circuit Court of Appeal affirmed the conviction and ordered that my direct appeal claims of Ineffective Assistance of Counsel (IAC) be deferred a to post-conviction proceeding where an evidentiary hearing could be held. State v. Colvin, 452 So. 2d at 1221-1222 (LA. 1984).

On March 27, 1985, I filed an Application for Post Conviction Relief (PCR), raising eight claims, including numerous claims of IAC at trial, several of them structural claims. My Application was procedurally defaulted on the grounds that I failed to "state" a claim that trial counsel's representation was below the standards set forth in Strickland v. Washington, 104 S. Ct. 2052 (1984).

On January 12, 2004, light of the U.S. Supreme Court's Holding in Glover v. U.S., 531 U.S. 198, 148 L. Ed. 2d. 604, 121, S. Ct. 696, I filed a Second Application in state district court, raising claims of IAC at sentencing and new evidence of nonexistence of prior convictions used to enhance my sentence. This "Second" petition was prematurely denied as untimely in the District Court's October 20, 2004, opinion which stated incorrectly that collateral review in this case was final in 1985. Post-Conviction Review did not become final in this 1985 state post-conviction review until February 11, 2019, by order of the Louisiana Supreme Court in State of Louisiana v. James Colvin, No. 17-KP-1840: "Respondent has now fully litigated his application for post-conviction relief in state court."

In 2014, in light of the U.S Supreme Court's in Martinez v. Ryan, 132 S. Ct. 1309 and Trevino v. Thaler, 133 S Ct. 1911, I filed a 28 U.S.C. 2254 habeas petition in the U.S. District Court for the Western District of Louisiana. This petition was also prematurely denied as untimely because the court incorrectly assumed that initial state collateral review was final in 1985.

On August 25, 2015, in light of the U.S. Supreme Court's twin rulings in Martinez and Trevino, I filed a Request for Supervisory Review and asked the Court to vacate the 1985 denial of my initial review PCR, where I raised direct appeal and initial PCR claims of IAC at trial as well as old that were properly stated and argued.

> NOTE: "Teague does not 'limit a state court's authority to grant relief or violations of new rules of constitutional law when reviewing its own state's convictions,'" and thus Teague does not prohibit state courts from applying a new rule to cases that are finalized before that new rule was announced, Danforth v. Minn., 552 U.S. 264, 278-82 (2008). My raising Martinez/ Trevino in my 2015 pro se Writ for Supervisory Review, and the Second Circuit's invocation of the Martinez Rule, is proven fact by the Court's Remand of the 1985 order denying "Initial Post-Conviction Proceeding--a Martinez/Trevino requirement. See Martinez v. Ryan, 132 S. Ct. 1309, 182 L. Ed. 2d, at 282-288.

On November 16, 2015, I filed a Motion for Appointment of Counsel and for an Evidentiary Hearing on the claims of IAC raised on Direct Appeal and in the 1985 Initial Review PCR proceeding as well as the new Structural claims raised in the August 25, 2015, Request for Supervisory Review. On May 10, 2016, the court granted the Motion for Appointment of Counsel. On April 25, 2017, the District Court denied my motion for an Evidentiary Hearing.

On June 8, 2017 and June 20, 2017, I filed, pro se, a Motion and Memorandum requesting that the court hear my claims on the merits on the intact record alone. The court ignored my timely filed motion and the claims raised therein as well as my information regarding how the Second Circuit applied the Martinez Rule to its Orders of Remand in this case.

On July 18, 2017, the Court dismissed my initial 1985 PCR Application based on the state's assertion that it was materially prejudiced under LA. C.Cr.P. art. 930.8 (B) and "For the reasons outlined in the October 1985 denial of Petitioner's Application, Petitioner's FIRST APPLICATION FOR POST CONVICTION RELIEF, filed March 27, 1985, is DENIED."

My attorney filed Supervisory Writs and on October 5, 2017, and the Second Circuit Court vacated the District Court's April 25 and July 18, 2017 Orders in a Ruling Made Preemptory and again Remanded for an Evidentiary Hearing and again did not state its reasons for the first or second Remand.

On February 11, 2019, the LA. Supreme Court granted Writs based on this incorrect assumption that relief granted by the Second Circuit was based on a clerk's filing error and not in part because of the Martinez Rule.

The Court further erred by concluding my 2015 Application for PCR was successive because of newly raised structural errors, and that the state was materially prejudiced under LA. C.Cr.P. art. 930.8 (B) because: "...when the transcript and record contain the portions necessary to address the issues actually raised on appeal, including those portions where objections were made by counsel, the record is constitutionally sufficient for a meaningful appeal." Schwander v. Blackburn, 750 F. 2d 494 (5 Cir. 1985)," citing Chenevert v. N. Burl Cain, Warden, 2012 U.S. Dist. LEXIS 150099 (E.D. LA. Aug.22, 2012, Civil Action No.12-966, Section "F" (2).

III

ARGUMENT

In 1983, the year the sentence was imposed in the case by the District Court the implications of LA. R.S. 15: 529.1, "DID NOT CARRY" the provisions of "HARD LABOR."

Louisiana 1982 Acts No. 688, section 1, relative R.S. 15:529.1 (G) provided: "Any sentence imposed under the provision of this section SHALL be without benefit of probation or suspension of sentence." And nothing about Hard Labor.

Before the legislature amended the habitual offender statute in 2010 and added the provision "at hard labor" to the statute, this Court was without legislative authority to

impose a penalty at HARD LABOR under the statute upon me. See 1982 Louisiana Acts No. 688, section 1.

Today, 2010 Louisiana Acts No. 69, amends and adds "at hard labor" read as Subsection (G): "Any sentence imposed under the provisions of this section shall be 'AT HARD LABOR' without benefit of probation or suspension of sentence." This law became effective in June 2010, well after I was sentenced. My conviction and sentence are innocent to the June 2010 statute and, therefore, under the Ex Post Facto clause of the Louisiana Constitution Art 1 Section 23, this Court has the authority and jurisdiction to amend and/or modify the sentence imposed herein under the previous legislation that applied at time of my sentencing. As already noted, the 2018 enactment of LA. R.S. 15:529.1(K)(1) and State v. Floyd, 254 So. 3d 38 (LA. App. 2d Cir. 08/15/18), REQUIRES sentencing courts to apply the provisions of the habitual offender law that were in effect on the date a defendant's instant offense was committed.

I entered the Louisiana Department of Public Safety and Corrections in August 1983. I have taken all possible positive and responsive steps to rehabilitate myself. Over the last 36 years of confinement I have completed the following programs and higher education. See attached university transcripts and certificates.

1. I have earned an Associate Degree in Arts from Inver Hills Community College.
2. I have enrolled in the University of Minnesota's B.A. in English Literature program and am currently 18 credits from completing that degree.
3. I am a member of the National Society of Collegiate Scholars, University of Minnesota Chapter.
4. I have completed two Seminar Courses in Hamline University's MFA in Writing Degree program. Hamline is a private university in St. Paul, MN.
5. I have completed the Federal Bureau of Prisons Challenge Program, a 500 hour extensive program, designed to understand and modify behavior to enable pro-social decision making. In addition, I completed the drug and alcohol awareness program.

6. At Rayburn Correctional Center I have recently completed the following programs: Cage Your Rage, Living in Balance (another nine-month drug program) and Pre-release. (See Annual Assessment, Exhibit - A.)

7. I am an accomplished artist and have created memorial works for fallen federal correctional officers at USP Canaan and USP Lewisburg. My artwork has also appeared in V-Twin and Esquire magazines. I am also experienced in the field of art restoration. I have written a memoir that has been optioned by a movie producer, Paul Pompian, who died suddenly in 2012. I am in touch with the Most Reverend Gregory Aymond, Archbishop of New Orleans regarding the creation of an official Carmalite Religious Order inside the LA. penal system. The Archbishop came to Rayburn personally to hold Mass and asked me to write a proposal and a Rule and send it to him. I am humbled by his support.

Should Honorable Court decide to amend or modify my sentence, I will reside in Minneapolis, Minnesota, or New Orleans, where I have the support of friends and family and the Catholic Church in my reclamation into society.

These achievements presented to this Court are prima facie evidence of my desire to take control of my destiny and become a productive member of society. These achievements are not the actions of a career criminal or someone who thrives on Ill or malicious intent. The foundation of rehabilitation with supporting mitigating issues upon review as a whole and not isolated when establishing my approach and acceptance of my punishment would warrant relief granted herein. State v. Thomas, 716 So. 2d 49 (L.A. 1998). Finally, I am 62 years old and the LA. Department of Public Safety and Corrections LARNA II (RISK ASSESSMENT) SCORE for reoffending is "LOW." (Exhibit-A).

IV

CONCLUSION

In this case ex post facto jurisdiction lies herein for this Honorable Court to correct a sentencing error on the face of the record. At the time of my sentencing L.A. R.S. 15:

529.1 (G) did not provide for me to be sentenced to Hard Labor. A review of the Judgement Order (Exhibit-B) shows that I was Indeed sentenced to HARD LABOR for a term of 80 years in violation of law. The 2018 enactment LA. R.S. 15: 529.1 (K)(1) and State v. Floyd, 254 So. 3d 38 (LA. App. 2d Cir. 08/15/18), REQUIRES sentencing courts to apply the provisions of the habitual offender law that were in effect on the date that my instant offense was committed.

I beg this Honorable court to have mercy on me and not allow me spend my entire life in prison (and then die in prison) for a robbery in which no one was physically harmed and in which a non-firing civil war replica pistol used. I was a stupid kid doing drugs and alcohol. Although I do not remember committing the crime, I am sorry for scaring the robbery victims and always have been.

Please consider amending my sentence from 80 years to 40 years running CONCURRENTLY with any federal sentence in any jurisdiction since the date of this instant state sentence, handed down on June 2, 1983.

I beg this Court to uphold the Interest of Justice and Fairness in sentencing and not allow prosecutorial sentiment to vitiate the fundamental purpose of penological and judicial discretion. I believe granting this Motion for Amendment, Modification, or Reconsideration of sentence will not deprecate the seriousness of the offense. I have taken necessary rehabilitative steps to ensure the Court that:

1. The elements that provoked me to act the way I did no longer exist and I have learned to avoid drugs and alcohol and drug dealers alike.
2. The offense resulted in significant loss: my mother and father have passed away along with four close friends and I was not allowed to go to the hospital in their last hours or to their funerals. The possibility of a wife and children and a home have long sailed away.
3. Because of the length of this instant sentence, I have served the last 36 years in America's worse prisons: Angola, U.S. Penitentiary Leavenworth, Lewisburg, Terre Haute, Canaan, Florence, Coleman-1, and managed to keep a clean disciplinary record

and rehabilitate myself and even protect weaker inmates in these violent prisons. (See Exhibit-C, letter from former Angola Correctional Officer, Tim Duncan).

I accept full responsibility for my actions and have met every rehabilitative goal available. Further imprisonment will not serve any additional rehabilitative purpose or added probative value.

WHEREFORE, I pray that this Honorable Court will amend or modify of my sentence, grant the requested Motion, and allow me to live the few years of life I have remaining with family and friends and/or order a contradictory hearing as to why this Motion should nor be granted.

Respectfully Submitted,

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James L. Colvin, #102489
Rayburn Correctional Center
27268 Hwy 21
Angie, LA 70426